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GOVERNOR OF HAWAII



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DEPARTMENT OF LAND AND NATURAL RESOURCES

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MINUTES
MAUI/LANAI ISLANDS BURIAL COUNCIL MEETING

DATE: Thursday, February 25, 2010
TIME: 9:00 A.M.
PLACE: County of Maui Planning Department
Kalana Pakui Building, 1st Floor
250 South High Street
Wailuku, Hawaii 96793

ATTENDANCE:

Members:	Charles Maxwell, Chair Scott Fisher, Vice-Chair James Ballao Bill Frampton Pua Paoa Keeaumoku Kapu Ed Kaahui Lynne Takiguchi	
Staff:	Hinano Rodrigues, Cultural Historian Kawika Farm, Clerk Pua Aiu, Administrator	
Absent:	John Naeole Wilson Kanakaole Patty Conte,	Excused Excused Unexcused
Guest:	Cara Bohne Brett Davis Pomaikai Kaniaupio-Crozier Kaniloa Kamaunu Carol Gentz	Blaine Kobayashi John Min Uilani Kapu Johanna Kamaunu Morgan Gerdel

I. OPENING REMARKS

Maui Lanai Islands Burial Council (MLIBC) chair, Maxwell called the meeting to order at 9:07am. Kapu gave the *pule wehe*.

II. APPROVAL OF MINUTES

January 28, 2010

Fisher moved and Frampton seconded, “to accept and file.”

VOTE: ALL IN FAVOR. The motion carried unanimously.

III. UPDATES AND INFORMATION

A. NAGPRA Requirements.

Information/Recommendation: Discussion on NAGPRA requirements regarding iwi inventory. Presentation by State Historic Preservation Division (SHPD) Administrator Pua Aiu.

Rodrigues handed out a copy of Maui’s iwi inventory.

Aiu said NAGPRA (Native American Grave Protection Repatriation Act) required the SHPD to start the process of repatriation which involved indentifying native Hawaiian organizations (NHO). The NHO’s will then be responsible for the repatriation of *iwi* in the SHPD’s inventory.

Kapu wanted to know how the new process differed from the process in which a lineal descendant is involved. Aiu thought all the *iwi* in the SHPD inventory did not have any lineal descendency claims.

The council wanted clarification on Maui’s *iwi* inventory. Rodrigues said the inventory accounted for all *iwi* physically located at the SHPD’s Maui office. Rodrigues said *iwi* that is in the possession of private archaeological firms are not accounted for on the inventory provided. Aiu said *iwi* should remain on a land owner’s property in order to avoid NAGPRA rules.

Maxwell wanted to know when the *iwi* on the inventory could be reburied. Aiu said consultation must be completed first and the SHPD needed to adhere to other federal guidelines. Maxwell said some of the *iwi* has been in the SHPD’s possession for over 15 years. Kapu wanted to know how landowners would be identified since some burials have been with the SHPD over 15 years. Rodrigues said majority of the burials belonged to Maui County which consisted of Kaulahau and Puupiha. Rodrigues said Hana Ranch is the landowner responsible for the second most burials. Rodrigues said communication with Maui County and Hana Ranch is positive and thought problems with repatriation may occur with individual private landowners due to the amount of time that passed since the initial discovery of the burial. Maxwell wanted to know what rights the council had if a landowner refused to permit *iwi* be reinterred onto the property from which it came. Rodrigues said there was no law which required a landowner to reinter *iwi* back onto his/her property. Rodrigues said the SHPD especially on Maui kept *iwi* in place on the property for practical reasons as well as to give the landowner a greater sense of responsibility to ensure the *iwi* is taken care of. Maxwell said the council should establish a criterion on how *iwi* should be stored.

Uilani Kapu (U Kapu) the president of Kuleana Kuikahi requested to be on the list of NHOs. U Kapu wanted to know if the public could get a copy of Maui’s *iwi* inventory. U Kapu thought the council should set the criteria on how *iwi* is stored. Aiu said the SHPD inventory is not normally open to the public. U Kapu wanted to know how *kupuna* and descendants would know about their *kuleana* for *iwi* if the inventory is not open to the public. Aiu said the public is informed on inadvertent discoveries at and through burial council meetings. U Kapu said Kuleana Kuikahi is

on a list of Hawaiian organizations maintained at the Office of Hawaiian Affairs. U Kapu wanted Kuleana Kuikahi on a list with the SHPD to insure notification and consultation of inadvertent burials occurred. Rodrigues said notification on future inadvertent burials occurs at monthly MLIBC meetings. Aiu said Kuleana Kuikahi will be consulted regarding the treatment of Maui's *iwi* inventory.

Maxwell wanted to know when Maui's *iwi* inventory could be made available to the general public. Rodrigues thought the *iwi* needed to be repatriated to the proper NHO before the NHO could start consultation with the public. Ballao wanted to know what would happen if more than one organization wanted to repatriate *iwi*. Aiu said the NHOs would need to have an agreement prior to receiving the *iwi*.

Johanna Kamaunu (Kamaunu) said she represented the Waihee Community Association Planning Committee. Kamaunu wanted to be involved with burials that belonged to Waihee. Kamaunu said the Waihee community wanted to be involved with burials that belonged to Waihee. Kamaunu wanted the Waihee Association to be given the opportunity to assume the responsibility of caring for the *iwi* of Waihee.

Kaniloa Kamaunu (K Kamaunu) said he represented Hui Pono. K Kamaunu went over Hawaii burial laws of 1800s.

Maxwell asked if the SHPD hired a new Maui archaeologist to which Aiu said no.

Kapu wanted to know who determined which NHO is qualified to handle repatriation of *iwi*. Aiu said NAGPRA focused on claims to *iwi* and not so much on which NHO is most qualified to handle *iwi*. Aiu said the NHO with the best claim regarding connection to the land, area and other things would be the NHO that received the *iwi*. Aiu said the primary characteristic of an NHO is to serve and represent the interest of Native Hawaiians. Aiu explained the process for repatriation of *iwi* which fell under NAGPRA's guidelines. Fisher thought the process for repatriation may take a minimum of a year to complete to which Aiu acknowledged.

Ballao thought the burial council needed to submit a claim to be recognized as an NHO in order to formally participate with repatriation.

B. Sacredness and Protection of Burial Sites.

Information/Recommendation: General discussion on the sacredness and protection of burial sites.

Maxwell said he contacted Clifford Naeole (Naeole), the cultural advisor for the Ritz Carlton Hotel regarding a firework show near the Honokahua burial site. Maxwell read a letter from Naeole onto record. Maxwell wanted more protection afforded the burial site. Fisher thought firework shows would no longer occur at the Ritz Carlton Hotel.

Fisher moved and Ballao seconded, "to have this [current agenda item] placed on next month's agenda."

VOTE: ALL IN FAVOR. The motion carried unanimously.

IV. Communication

A. Letter dated December 29, 2009 from County of Maui, Department of Housing and Human Concerns to SHPD Administrator Pua Aiu regarding Kula Ridge Mauka Property Kealahou 3 & 4 Ahupua'a, Makawao (Kula) District, Island of Maui, TMK: (2) 2-3-001: 023. Information/Recommendation: Discussion on the above letter requesting clarification from SHPD as to whether or not an Addendum to the Archaeological Inventory Survey is required for this parcel.

Maxwell read a letter dated December 29, 2009 onto record. Maxwell read a letter dated February 22, 2010 onto record. Maxwell wanted the MLIBC to ask the Department of Housing and Human Concerns (DHHC) to ask the SHPD to pursue an addendum to the existing AIS for the subject project. Maxwell wanted to know what was meant by "SHPD will consider the request." Aiu said an agency needed to ask the SHPD to ask the developer to conduct an addendum to the archaeological inventory survey (AIS) if new information became available. Maxwell thought the council needed to ask the DHHC as an agency of the county to ask the SHPD to revisit the issue on whether an addendum is warranted. Paoa wanted to know what constituted new information to which Aiu was not sure. Kapu said a burial was found in a site that was deemed insignificant which was largely why the council wanted an addendum to the existing AIS. Fisher also wanted clarification on what constituted new information.

U Kapu thought the council needed to draft another letter to ask the SHPD to reconsider an addendum to the existing AIS.

Kamaunu thought the State is wrong with its interpretation on what request qualified for reconsideration on whether an addendum is warranted.

K Kamaunu did not like the process and concept of administrative rules.

Blaine Kobayashi (Kobayashi) presented a copy of Hawaii Administrative Rules 13-284-11 and did not think it was appropriate for an agency to simply ask for re-evaluation of an inventory survey. Kobayashi felt the requesting agency must present new information when asking for re-evaluation of an AIS.

Fisher said Dana Hall had pointed out deficiencies with the AIS at previous meeting and hoped the requesting agency would reiterate those deficiencies which should be considered new information which should trigger re-evaluation by the SHPD. Fisher wanted to know who advocated the position of the MLIBC to the attorney general's (AG) office. Aiu said the MLIBC could advocate on their own behalf to the AGs office.

Paoa wanted someone to explain what constituted new information. Paoa wanted an attorney general present to answer her question. Maxwell said money was not available to pay for an AG to attend MLIBC meetings. Paoa said the council is ineffective because they don't fully understand the law which is why she wanted an AG present to help guide the council into making useful decisions.

Fisher moved and Ballao seconded, "to grant the chair and vice-chair to draft a letter recommending the Department of Housing and Human Concerns request the State Historic Preservation Division pursue an addendum AIS to the Kula Ridge Mauka site prior to the issuance of any permits at Kula Ridge Mauka, TMK:2-3-001:023."

VOTE: ALL IN FAVOR. The motion carried unanimously.

Maxwell called a brief recess at 11:05am. Maxwell called the meeting back to order at 11:15am.

B. Letter dated January 7, 2010 from the County of Maui Community Development Block Grant Program regarding The Best House project Wailuku Ahupua'a, Wailuku District, Island of Maui, TMK: (2) 3-3-001: 106.

Information/Recommendation: Discussion on the above letter notifying the burial council of a Finding of No Significant Impact for the project.

Maxwell read letter dated January 7, 2010 onto record. Maxwell said the sand dune in the project area is known to contain burials.

John Min (Min) identified the location of the project area on handouts. Min gave a brief history of the property and said an environmental assessment was completed for the property. Min said an AIS was also completed for the property by Scientific Consultant Services (SCS). Min said the AIS was reviewed and accepted by the SHPD and included within the final environmental assessment. Min said the project coordinator was Pomaikai Kaniaupio-Crozier (Kaniaupio-Crozier). Min said the project would not impact the sand dune and work would occur within the flat area of the property. Min said monitoring was recommended and Kaniaupio-Crozier would oversee the monitoring program. Maxwell wanted to know if Kaniaupio-Crozier was an archaeologist. Min said Kaniaupio-Crozier is not an archaeologist, but is very familiar with cultural practices. Maxwell said an archaeologist needed to be present if ground altering activity is to occur. Maxwell said the area is known to have burials.

Frampton wanted to know when the SHPD completed its review of the project. Min had two letters with the first letter dated June 13, 2008 and a second letter dated September 4, 2009. Min said SCS did recommend archaeological monitoring. Min said Kaniaupio-Crozier would be in charge of monitoring. Maxwell said Kaniaupio-Crozier is not an archaeologist. The council wanted to know why the SHPD did not concur with SCS's recommendation for monitoring. Min said an archaeologist would be used to monitor the project if that is the desire of the council. Min said structures would be erected on the property in the future at which time an archaeologist would be used if necessary. Maxwell preferred an archaeologist be present to monitor ground altering activities. Min said an archaeologist will be present during excavation for the erection of proposed structures. Fisher wanted to know if the project had a monitoring plan to which Min said yes.

Maxwell wanted the archaeologist from SCS that drafted the archaeological studies for the project to attend the next MLIBC meeting. Maxwell wanted to know why the subject agenda item was before the council. Rodrigues said the matter was before the council as part of the projects due diligence in notifying applicable agency of their intent. Rodrigues wanted to know if an archaeological inventory survey or an archaeological assessment (AA) was completed for the project. After reviewing both letters from Min, Aiu said an AA was completed for the project and recommended archaeological monitoring.

Maxwell requested a copy of all archaeological studies completed for the subject project and property prior to the next MLIBC meeting.

K Kamaunu was also thought the area is known to contain burials. K Kamaunu wanted the State held more accountable for its actions. K Kamaunu could not believe the proposed project would not have an impact on the area. K. Kamaunu said today was the first he had heard of the project and he is a resident of the area.

Kamaunu thought better communication needed to occur between the MLIBC and the SHPD. Kamaunu also was aware the area of the projects location is known to have burials.

Fisher moved and Kapu seconded, “the Maui Lanai Islands Burial Council request the presence of the primary archaeologist, Mike Dega, [copies of] the monitoring plan and archaeological monitor from the Ke Kahua Farm project site attend the next MLIBC meeting.”

VOTE: ALL IN FAVOR. The motion carried unanimously.

V. ANNOUNCEMENTS

Rodrigues advised the council to read the letter by Wilson Okimoto Corporation included within the council's packets to determine whether or not they wanted to comment on the project.

VI. ADJOURNMENT

Kapu moved and Frampton seconded, “to adjourn at 11:59am.”

VOTE: ALL IN FAVOR. The motion carried unanimously.

Respectfully Submitted,

Kawka Farm